

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Numbering Resource Optimization) CC Docket No. 99-200
)
South Bay Cities Council of)
Governments, <i>et al.</i> Petition for) DA 05-3158
Emergency Relief of the California)
Public Utilities Commission's Decision)
to Implement an All Services Area Code)
Overlay in the 310 Area Code)

**COMMENTS OF
T-MOBILE, CINGULAR WIRELESS AND AT&T INC.**

T-Mobile USA, Inc., Cingular Wireless, LLC, and AT&T Inc. on behalf of its affiliates (collectively, the “Joint Telecommunications Carriers”) respectfully submit this opposition to the Petition for Emergency Relief (“Petition”) filed by the South Bay Cities Council of Governments (“SBCCOG”) and The Telephone Connection of Los Angeles, Inc. and The Telephone Connection Local Services, LLC (“TCLA”) (collectively, the “Petitioners”).¹ The Petitioners seek to stay implementation of the California Public Utilities Commission’s (“CPUC”) decision to implement an all-services overlay (“Overlay Plan”) in the 310 NPA² on the grounds that the resulting 1+10-digit dialing

¹ South Bay Cities Council of Governments, The Telephone Connection of Los Angeles, Inc. and the Telephone Connection Local Services, LLC, *Petition for Emergency Relief*, CC Dkt. 96-98 (filed Nov. 23, 2005) (the “*Petition*”); *see also Wireline Competition Bureau Seeks Comment on South Bay Cities Council of Governments, et al., Petition for Emergency Relief of the California Public Utilities Commission’s Decision to Implement an All-Services Area Code Overlay in the 310 Area Code*, DA 05-3158 (rel. Dec. 8, 2005) (“Public Notice”).

² *Order Instituting Rulemaking on the Commission’s Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission’s Own Motion into Competition for Local Exchange Service, Rulemaking 95-04-043, Investigation 95-04-044, Opinion Granting Petition to Modify Decision 00-09-073, Decision 05-08-040* (CPUC Aug. 25, 2005) (*Overlay Decision*).

pattern unfairly discriminates against wireline carriers.³ The Joint Telecommunications Carriers urge the Federal Communications Commission (“FCC”) to deny the Petition and allow the CPUC *Overlay Plan* implementation to continue. As explained below, any delay in implementation of the *Overlay Plan* will inevitably lead to complete exhaust of the 310 NPA, which will cause far greater and certain harm to both consumers and carriers than any alleged and speculative harm Petitioners claim.

I. INTRODUCTION

The CPUC developed the *Overlay Plan* in response to the imminent exhaust of the 310 NPA. After a comprehensive proceeding which included extensive industry and consumer input, the CPUC determined that implementation of a new area code, in the form of an all-services overlay, was the best way to provide the necessary area code relief for the 310 NPA.⁴ After having sought, and been denied⁵ rehearing of the *Overlay Decision* based on the 1+10-digit dialing pattern resulting from the *Overlay Decision*, TCLA, now in conjunction with SBCCOG, seeks from the FCC relief similar to that appropriately denied by the CPUC. As explained below, Petitioner’s request must be denied because immediate implementation of the CPUC’s *Overlay Plan* is critical to avoid complete exhaust of the 310 NPA, which would cause certain and irreparable harm to consumers and carriers alike.

³ *Petition* at 3.

⁴ *Overlay Decision* at 3.

⁵ See *Application of the Telephone Connection of Los Angeles, Inc. and The Telephone Connection Local Services, LLC (U-5522-C) For Rehearing of Decision 05-08-040*, CPUC Docket Nos. R.95-04-043, I.95-04-044 (filed Sept. 13, 2005). See also *Order Instituting Rulemaking on the Commission’s Own Motion into Competition for Local Exchange Service*; *Order Instituting Investigation on the Commission’s Own Motion into Competition for Local Exchange Service, Rulemaking 95-04-043, Investigation 95-04-044*, *Order Denying Rehearing of Decision (D.) 05-08-040* (CPUC Nov. 18, 2005).

II. THE PETITIONERS HAVE FAILED TO MEET THE STANDARD TO JUSTIFY A STAY OF THE CPUC OVERLAY DECISION

The Petitioners accurately articulated the standard they must meet in order to justify grant of a stay, and correctly noted that the factors of the stay standard are analyzed on a “sliding scale.”⁶ However, Petitioners present no evidence that they will “suffer irreparable injury absent a stay” and they seek to discount entirely the fact that a stay “would substantially harm other interested parties” and “would [not] serve the public interest.”⁷ As explained below, Petitioners *cannot* demonstrate that any injury they potentially could suffer as a result of maintaining the *status quo* for dialing patterns would outweigh the certain and irreparable harm to California consumers, businesses and all telecommunications service providers that will result from a stay or any type of delay in the implementation of area code relief, or that forcing consumers and carriers alike to suffer this substantial and irreparable harm would serve the public interest. Therefore, the Petition must be denied.

A. The Overlay Plan Implementation Must Continue to Prevent Certain and Irreparable Harm to Consumers, Businesses and Carriers

The 310 NPA is forecasted to exhaust immediately and, unless the CPUC *Overlay Plan* is implemented as scheduled, consumers, businesses and telecommunications services providers will not be able to obtain new telephone numbers.⁸ The FCC has repeatedly recognized that “access to telephone numbering resources is crucial for entities wanting to provide telecommunications services because telephone numbers are

⁶ Petition at 5.

⁷ See *Virginia Petroleum Jobbers Ass’n. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), as modified in *Washington Metropolitan Area Transit Comm’n. v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

⁸ NANPA October 2005 NPA Exhaust Analysis at http://www.nanpa.com/reports/reports_nruf.html (visited Dec. 15, 2005) (forecasting that the 310 NPA will exhaust in the 4th quarter of 2005).

the means by which telecommunications users gain access to and benefit from the public telephone switched network.”⁹ However, consumers and carriers will be denied access to these “crucial” resources in the 310 NPA unless the Petitioner’s request for a stay is denied and the CPUC’s *Overlay Plan* is allowed to take effect as scheduled.

California’s 310 NPA was determined to be in jeopardy – an indication that the supply of numbers could exhaust before relief could be provided – as early as 1997.¹⁰ Although the efforts of the CPUC and the carriers to optimize the efficiency with which numbering resources in this area code are used have extended the life of the 310 NPA, exhaust is now impending, and nothing short of immediate implementation of area code relief will prevent consumers and carriers from suffering the proven harms that result from the want of numbering resources.

At this time, there are fewer than 160 thousand-blocks of telephone numbers distributed among 16 rate centers available for assignment in the 310 NPA.¹¹ Over the past four months 143 thousand-blocks were assigned and only 40 thousand-blocks were returned, for a net loss of 103 thousand-blocks of telephone numbers.¹² As of December 22, 2005, of the 16 rate centers in the 310 NPA, four (4) have zero (0) blocks, eight (8)

⁹ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶261 (1996) (“*Numbering Order*”); *CPUC Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures*, 14 FCC Rcd 17486, ¶9 (1999) (“*Delegated Authority Order*”) (emphasis added) (“Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice *for a want of numbering resources*. For consumers to benefit from the competition envisioned by the Telecommunications Act of 1996, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible.”).

¹⁰ NANPA, *Jeopardy Procedures*, http://www.nanpa.com/news/jeopardy_declaration_table.html (visited Dec. 15, 2005); Memorandum from Cecelia Louie, Sr., Code Administrator, NANPA Western Region, Neu Star, to 310 NPA (California Code Holders and Potential Code Holders) (Sep. 18, 2000), http://www.nanpa.com/news/jeopardy_declaration_table.html (visited Dec. 15, 2005).

¹¹ Neu Star Pool Tracking Report, <https://www.nationalpooling.com/pas/control/pooltrackingreport> (visited Dec. 22, 2005) (“*Pool Tracking Report*”).

¹² *Pool Tracking Report*, Actual monthly Data (visited Dec. 22, 2005).

have fewer than five (5) blocks available for assignment and eleven (11) have fewer than ten (10) blocks available.¹³

Given the current status of the 310 NPA, unless the *Overlay Plan* implementation continues, there will be no telephone numbers available for telecommunications service providers, consumers or businesses. Consumers and businesses will be denied the ability to select the service provider or service of their choice, existing carriers will be unable to offer new service options, and new telecommunications service providers will be unable to enter the market and provide service in the 310 NPA. As the Commission has repeatedly found, this result would be unacceptable and fundamentally inconsistent with the requirements of the Act. The Petitioners simply have not demonstrated that these certain harms would be outweighed by any alleged harm they potentially might suffer from maintaining the current dialing plans utilized in the State.

B. The Petitioners Have Failed To Demonstrate They Would Suffer Irreparable Harm Absent Grant of the Requested Stay

When confronted with the impending unavailability of sufficient telephone numbers to meet the needs of the millions of residents of the 310 NPA,¹⁴ the CPUC developed the *Overlay Plan* to prevent the certain harm that will result from the imminent exhaust of the 310 NPA. As an initial matter, the Petitioners incorrectly claim that the CPUC lacks the authority to implement the 1+10-digit dialing pattern resulting from the *Overlay Plan*.¹⁵ The FCC has delegated authority to the states to “resolve matters

¹³ *Pool Tracking Report*, Summary (visited Dec. 22, 2005).

¹⁴ U.S. Census Bureau, State & County QuickFacts, at <http://quickfacts.census.gov/qfd/states/06/06037.html> (visited Dec. 15, 2005).

¹⁵ See, e.g., Petition at 3 (alleging that the 1+10-digit dialing pattern violates the FCC’s overlay rules).

involving the implementation of new area codes” including the right to implement overlay plans and to determine appropriate dialing patterns which best address the needs of the state.¹⁶ In light of the impending exhaust of available telephone numbers in the 310 NPA and the FCC’s statements regarding the crucial nature of access to numbering resources for both telecommunications service providers and telecommunications users,¹⁷ the CPUC’s development and implementation of the *Overlay Plan* was both necessary and authorized.

As explained above, immediate implementation of the *Overlay Plan* is the only way to avoid the certain and irreparable harm that would result if the 310 NPA reaches full exhaust. By contrast, the Petitioners have failed to meet their burden of demonstrating that they would suffer any cognizable – much less irreparable – harm unless implementation of the *Overlay Plan* is stayed. Therefore, the Petition must be denied.

1. Implementation of the *Overlay Plan* Is Unrelated To the Harms the Petitioners Claim They Will Suffer Absent A Stay.

The Petitioners focus their argument on their claim that wireline providers and consumers are unfairly disadvantaged by having to dial 1+10 digits while wireless carriers and consumers are able to make the same calls by dialing 10 digits, and that denial of the stay will cause them “certain and great” injury if the dialing pattern is subsequently changed to incorporate their recommendation due to customer confusion and the additional costs that will be necessary to educate the public regarding those changes.

¹⁶ *Numbering Order*, 11 FCC Rcd 19392, ¶¶272, 282, 317.

¹⁷ *Id.* ¶261.

As an initial matter, irrespective of the fact that the CPUC has sufficient authority to do so, the *Overlay Plan* does not mandate 1+10-digit dialing for any type of provider, whether wireline or wireless. Rather, the *Overlay Plan* merely maintains the *status quo*. Specifically, much of the wireline network in California is already configured to require consumers to dial “1” before any 10-digit-dialed telephone number. By contrast, the wireless network enables calls to be completed by dialing only ten digits.¹⁸ This configuration is independent of the *Overlay Plan* and the CPUC’s decision to order area code relief. Accordingly, implementation of the *Overlay Plan* is not the direct cause of the alleged harms Petitioners claim justify a stay. Therefore, it would be improper to stay implementation of area code relief based upon those indirect alleged harms, particularly when the direct and irreparable harms that certainly will result from any delay in area code relief would be so great.

Equally as important, regardless of whether the current dialing patterns are flawed as Petitioners claim, consumers are accustomed to using these dialing patterns when calling different area codes within the state. Moreover, the CPUC has already approved and *implemented* an extensive public education plan to inform consumers of the new overlay.¹⁹ Initial customer notifications have already been sent to all consumers in the 310 NPA and permissive dialing is scheduled to begin as of December 31, 2005. Staying implementation of the *Overlay Plan* at this time would only serve to confuse and frustrate consumers who have already prepared themselves to comply with the dialing

¹⁸ *Overlay Decision* at 48-49.

¹⁹ *Id.* at 37-42. The Public Education Plan includes: television, radio and newspaper advertising, public speeches and appearances, and targeted contact by telephone, mail and personal visits. *Id.* at 57 (the public education plan “shall at a minimum consist of the measures as set forth in Appendix A of this order”). See also Appendix A to *Overlay Decision*. The CPUC established a preliminary budget of \$340,000 for the plan. *Overlay Decision* at 58.

requirements of the *Overlay Plan*, as well as to waste the financial resources and time spent on the public education plan. Accordingly, contrary to the claims of the Petitioners, staying implementation of the *Overlay Plan* – rather than denying their stay request – would actually cause the potential harms of which the Petitioners claim.

Petitioners argue that the CPUC cannot anticipate the effect of its 1+10-digit dialing requirements since this will be the first time the CPUC has implemented an overlay.²⁰ However, as the Petitioners readily acknowledge, California is not the only example of 1+10-digit dialing in the United States.²¹ Specifically, other states have implemented similar area code overlays in major metropolitan areas,²² and thus the effect of the 1+10-digit dialing requirements can be anticipated based on the effects of the dialing requirements of the other area code overlays. For example, after implementing at least four geographic area code splits within a two year period, the Illinois Commerce Commission chose to implement an all-services overlay when confronted with the impending exhaust of its 847 NPA.²³ The overlay was successfully implemented in Chicago, a city of more than eight million people, even though consumers and businesses were required to adjust from 7-digit dialing to 1+10-digit dialing.²⁴ No irreparable harm

²⁰ *Petition* at 7.

²¹ *Id.* at 8.

²² See, e.g., *Citizens Utility Board Petition to Implement a form of telephone number conservation known as number pooling within the 312, 773, 847, 630 and 708 area codes; Illinois Bell Telephone Company Petition for Approval of an NPA Relief Plan for the 847 NPA*, Order, Illinois Commerce Commission Docket Nos. 97-0192, 97-0211 (Ill. CC May 11, 1998) (implementing an all-services overlay) (“*Chicago Overlay Order*”); see also NANPA, *Area Codes Requiring 10 Digit Dialing*, at <http://www.nanpa.com/nas/public/npasRequiring10DigitReport.do?method=displayNpasRequiring10DigitReport> (visited Dec. 15, 2005) (listing two NPAs in Illinois and five in New York requiring 1+10-digit dialing).

²³ See *Chicago Overlay Order* at 34-35, see also Illinois Commerce Commission Telecommunications Division Staff Report at 8 (June 25, 1998).

²⁴ See Chicago, IL MSA Population and Components of Change, at <http://recenter.tamu.edu/data/popm/pml600.htm> (visited Dec. 15, 2005).

resulted from the implementation of the Illinois overlay plan, and nothing about the *Overlay Plan* suggests that the result would be any different here.

2. The Concerns of the Petitioners Can Be Addressed By the CPUC or the FCC After the Overlay Plan Is Implemented

To the extent the Petitioners have raised issues that may or may not warrant further consideration, those issues can be addressed after area code relief has been implemented. In fact, the CPUC recently reserved in a decision its right to consider “a future revision in dialing requirements applicable to the 310/424 area code overlay, as warranted,” in the event it decides to revise the current dialing patterns for other future overlays in the State.²⁵ In that same decision, the CPUC also found, among other things, that the “risk of prolonging the implementation of the 310/424 area code overlay and creating more customer confusion during the implementation phase” prevailed over any identified advantages of changing the current state calling plan.²⁶ Moreover, as explained above, any harm that might result from a delay in the modification of the dialing pattern is far outweighed by the certain and irreparable harm that will result if the 310 area code reaches full exhaust, which will happen if implementation of the *Overlay Plan* is delayed. Therefore, there is no justification or need for the FCC to delay implementation of the *Overlay Plan* to address the issue here.²⁷

²⁵ See *Order Instituting Rulemaking on the Commission’s Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission’s Own Motion into Competition for Local Exchange Service, Rulemaking 95-04-043, Investigation 95-04-044, Opinion on Petition for Modification*, Decision 05-12-047 at Conclusion of Law No. 6 (CPUC Dec. 15, 2005). Even if the Petitioners can convince the CPUC that sufficient cause exists, as a matter of policy, to reconsider the existing local dialing pattern, this does not change the fact that the CPUC, as a matter of law, has appropriately exercised its authority here. Moreover, the Joint Telecommunications Carriers do not support reconsideration of the existing local dialing pattern at this time.

²⁶ *Id.* at 13.

²⁷ *Overlay Decision* at 49.

IV. CONCLUSION

For the foregoing reasons, the FCC should proceed promptly to deny the *Petition* and permit the CPUC to continue its *Overlay Plan* implementation as scheduled.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Todd D. Daubert / dns".

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